

# **Q&A for Implementation of HB 1343**

## **Certification Statement regarding Illegal Aliens**

**June 26, 2006**

### **1. How will the State implement the provisions of HB 1343 regarding certification?**

To address the certification of HB 1343, the State Controller's Office and State Purchasing plan to do the following:

1. Adopt an Emergency Fiscal Rule to add Special Provision #10 to be included in all state contracts that has certification language. The Contractor will sign the contract, which will include the certification, and this will meet the certification requirement of HB 1343
2. Develop certification statement for purchase order for services. This certification must be signed and returned by the vendor to the state agency before the vendor can begin work
3. Obtain signed certification statements from all vendors for services with price agreements
4. Include a notice in BIDS and encourage the agencies to include a notice in all solicitations for services that the contractor will need to sign a certification statement regarding illegal aliens.

### **2. What type of agreements are covered by HB 1343?**

Under CRS 8-17.5.5-101 (6), "Public contract for services" means any type of agreement, regardless of what the agreement may be called, between a state agency or political subdivision and a contractor for the procurement of services. So, this would include contracts for services and purchase orders for services.

### **3. Does HB 1343 apply to inter-agency agreements and inter-governmental agreements?**

HB 1343 does not apply to inter-agency agreements (state agencies and institutions of higher education). Inter-agency agreements do not require the certification statement.

Inter-agency is not the same as inter-governmental. If your agency contracts with another government agency, which is not part of the State of Colorado, then you will need to obtain certification. Examples include agreements with agencies in other states and with Colorado cities and counties.

#### **4. Does HB 1343 apply to grant agreements?**

HB 1343 would apply to grant agreements where the grantee is providing services and the grantee is not another Colorado state agency or institution of higher education.

#### **5. How do we handle a contract for services?**

With the inclusion of special provision concerning illegal aliens, there is no additional piece of paper that needs to be obtained from the contractor. The special provision includes the certification, and by signing the contract, the contractor is agreeing to all items in the contract, including the certification statement.

#### **6. How do we handle a purchase order for services?**

A purchase order for services must include the certification statement, and the vendor must return a signed certification statement to the state agency prior to beginning work. The vendor cannot accept by performance without first completing and sending back the certification statement to the state agency.

We would suggest that the agencies require the vendor performing services to first send back the certification statement to the agencies. Then, after the agency has received the certification statement, the agency would issue the purchase order for services to the vendor.

#### **7. Do Contractors/Vendors have to obtain a similar certification from their subcontractors?**

No, Contractors/Vendors do not have to obtain similar certifications from their subcontractors.

#### **8. Will Agencies need to obtain the certification statement from vendors for services that are included in price agreements?**

State Purchasing will require all vendors with price agreements for services to sign the certification statement annually. Until certification is obtained, any purchase orders issued against the price agreement should follow the purchase order process in question #5 above.

State Purchasing will provide notice on the face of the price agreement indicating whether or not the vendor has signed a current certification. (Note: Agencies must obtain a separate certification from the vendor if they contract for work not governed by the price agreement)

**9. Will Agencies need to obtain the certification statement from vendors that win the award through the RFP process?**

Yes. State Purchasing recommends that agencies include a notice in all solicitations for services. However, this notice is not sufficient for a certification. The contract special provision or the PO Certification Statement addresses the certification requirement.

**10. Why do we need to add a notice regarding the certification in all solicitation for services?**

With notice regarding the certification, it is possible that a contractor may decide to drop out of the competition. Also, it should make it easier to obtain the certification statement after the contractor wins the award because the contractor was previously aware of the certification statement requirement.

**11. How would we handle emergencies, where we need the contractor to begin work immediately?**

In emergencies, your agency will need to obtain a certification statement before work begins. Because the requirement of the certification is in statute, the State Controller's Office cannot waive this requirement.

**12. If the contractor is overseas, whose laws determine illegal alien?**

If the contractor is overseas, the contractor will need to comply with US laws for hiring employees and using subcontractors in the US. The statute does not cover situations where the contractor performs the work overseas with individuals that are considered illegal aliens in the overseas country.

**13. When is this effective?**

HB 1343 is effective August 9, 2006. To ensure that we meet that timing, all contracts initiated after July 1, 2006 should include the additional special provision regarding illegal aliens. For all purchase orders issued after August 9, 2006, the agencies should first obtain a certification statement from the contractor prior to issuing the PO.

This statute does not apply to existing contracts and PO's in place as of July 1, 2006.

**14. What about the notice provisions in HB 1343?**

The certification statement requires the contractor to comply with CRS 8-173.5-101 et Seq. There are many provisions in this act. The certification mentions most of them, but not all of them. Please read the statute, or you can also read the "long summary of HB 1343" below.

**Long Summary of HB 1343**  
**NOT A SUBSTITUTE FOR READING THE ENTIRE BILL**

ILLEGAL ALIENS – PUBLIC CONTRACTS FOR SERVICES. CRS 8-17.5-101 and

Public Law 208, 104<sup>th</sup> Congress, as amended and expanded in Public Law 156, 108<sup>th</sup> Congress, as amended

Definitions:

“Public contract for services” means any type of agreement, regardless of what the agreement may be called, between a state agency or political subdivision and a contractor for the procurement of services.

“Basic Pilot Program” means the Basic Pilot Employment Verification Program created in Public Law 208, 104<sup>th</sup> Congress, as amended and expanded in Public Law 156, 108<sup>th</sup> Congress, as amended, that is administered by the United States Department of Homeland Security.

“Contractor” means a person having a public contract for services with a state agency or political subdivision of the state.

“Services” means the furnishing of labor, time, or effort by a Contractor or a subcontractor not involving the delivery of a specific end product other than reports that are merely incidental to the required performance.

For public contracts for services, the Contractor shall not:

1. Knowingly employ or contract with an illegal alien to perform work under the public contract for services; or
2. Enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the public contract for services.

The Contractor has verified or attempted to verify through participation in the Basic Pilot Program that the Contractor does not employ any illegal aliens and, if the Contractor is not accepted into the Basic Pilot Program prior to entering into a public contract for services, that the Contractor shall apply to participate in the Basic Pilot Program every three months until the Contractor is accepted or the public contract for services has been completed, whichever is earlier. These requirements will not be

effective in a public contract for services if the Basic Pilot Program is discontinued.

The Contractor is prohibited from using the Basic Pilot Program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed.

If the Contractor obtains actual knowledge that the subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, the Contractor shall be required to:

- A. Notify the subcontractor and the contracting state agency or political subdivision within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
- B. Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to subparagraph A, the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

The Contractor is required to comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation by the Department.

If a Contractor violates a provision of the public contract for services required pursuant to CRS 8-17.5-101, the state agency or political subdivision may terminate the contract for a breach of the contract. If the contract is so terminated, the contractor shall be liable for actual and consequential damages to the state agency or political subdivision.

The state agency or political subdivision shall notify the Office of the Secretary of State if the Contractor violates a provision of a public contract for services required pursuant to CRS 8-17.5-101 and the state agency or political subdivision terminates the contract for such breach.